

To: Karen Schwinn/R9/USEPA/US@EPA[]
Cc: Tom Hagler/R9/USEPA/US@EPA[]
From: "Jerry Meral"
Sent: Sat 3/19/2011 1:02:24 PM
Subject: RE: BDCP - follow-up from mtg at EPA 3/11

Hi Karen

Thanks for sending this material, and for your explanatory note. This is extremely helpful. I will confer with our staff and get back to you shortly.

Best regards,

jerry

From: Schwinn.Karen@epamail.epa.gov [mailto:Schwinn.Karen@epamail.epa.gov]
Sent: Friday, March 18, 2011 3:31 PM
To: Jerry Meral
Cc: Hagler.Tom@epamail.epa.gov
Subject: BDCP - follow-up from mtg at EPA 3/11

Jerry -

Thanks for taking the time to visit with Regional Administrator Jared Blumenfeld, Tom Hagler and I last Friday. I'm following up on two of the issues we discussed related to the Bay Delta Conservation Plan.

The first issue involves potential EPA regulatory actions on BDCP elements as the BDCP is implemented. Given that the project proponents are still defining the BDCP project, we don't know for sure which regulatory provisions will be called into play. Nevertheless, we anticipate possible EPA action points for, at the very least: (1) Clean Water Act 404 permits for conveyance facilities and habitat restoration; (2) review of NEPA documents; and (3) review and approval of changes to State water quality standards under Clean Water Act 303.

I said I would send you our written comments related to the BDCP to date. During the NEPA scoping process, EPA requested that the BDCP identify potential impacts of BDCP proposals on water quality in the Delta and related waterbodies. This information will be necessary to support any EPA regulatory decisions. I am attaching copies of our two formal scoping comment letters. The May 14, 2009 letter goes into some detail on water quality parameters that should be evaluated in the BDCP process. Much of this discussion emanated out of the CALFED Water Quality Program and may be familiar to you from your earlier participation on the CALFED advisory groups.

In addition, I am attaching an exchange of correspondence from last year between EPA and the Federal BDCP agencies regarding the "purpose and need" statement for the project. Although protracted discussions of "purpose and need" tend to aggravate normal people, it is critical in both the NEPA process and the Clean Water Act 404 alternatives process for all agencies to have a common understanding of the project purposes.

The second issue I wanted to follow up on is that of meshing the BDCP process and the permitting processes. As we noted at our meeting, absent some affirmative action by the involved agencies, Clean Water Act permitting tends to be done sequentially, after the project proponent has completed evaluations for their own purposes. This sequential approach frequently leads to repetition and delay, as permitting agencies need to supplement environmental documentation for their own permit decisions. We understand from the Federal BDCP action agencies that they would like to avoid delay by developing a single environmental document that satisfies the ESA, Clean Water Act, and State Board purposes. We heard from you that this was the State's intention as well.

EPA and the Corps have significant experience with coordinating environmental permitting with action agency environmental review documents. As an example, I am enclosing a recent Memorandum of Understanding (MOU) among EPA, the Corps, and the State and Federal transportation agencies working on High Speed Rail projects in California. The purpose of the MOU is to lay out agency expectations and mechanisms for coordinating, so that potential problems in agency goals or mandates are identified and resolved as soon as possible. We have a similar MOU with CalTrans for its highway projects. There are probably other examples or approaches for moving towards a "single environmental review" goal, but these MOUs are those that EPA, the Corps, and relevant action agencies in California have used most recently for evaluating complicated projects.

If you have any questions about this material, please email or call me at (415)972-3472. We look forward to helping move this process forward. - Karen